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DEFENSE, DEPARTMENT OF

New guidance, Federal Acquisition Circular (FAC) 84-33, implementing the Office of Management and Budget's (OMB) Revised Circular A-125, "Prompt Payment" has been published by the Department of Defense, General Services Administration and National Aeronautics and Space Administration (see the 2/8/88 Fed. Reg., pp. 3688-96). Revised Circular A-125 generally requires Federal agencies to pay interest on delinquent payments to contractors. FAC 84-33 consolidates the policies and procedures necessary to implement OMB Circular A-125 under a single procurement regulation. The FAR guidance requires payment be made within 30 days after the later of: 1) receipt of a proper invoice, or 2) government acceptance of supplies or services. Acceptance is deemed to have occurred on the fifth working day after contract delivery. Special acceptance provisions for fixed-price construction and fixed-price architect-engineer contracts are included in the guidance in recognition of the fact that payment for such contracts is based on estimates of work completed. Regarding contract financing, the guidance allows agencies to prescribe shorter payment periods, "if appropriate based on contract pricing or administrative considerations." However, a period shorter than 7 days or longer than 30 days shall not be prescribed. FAC 84-33 also covers the ratification of unauthorized commitments. An unauthorized commitment is an agreement that is not binding solely because the government representative lacked the authority to enter into that agreement on behalf of the government. Under the guidance, unauthorized commitments may be ratified only if the following seven conditions are met: 1) supplies or services have been provided to and accepted by the government, or the government otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment; 2) the ratifying official could have granted authority to enter or could have entered into a contractual commitment at the time it was made and still has the authority to do so; 3) the resulting contract would otherwise have been proper if made by an appropriate contracting officer; 4) the contracting officer reviewing the unauthorized commitment determines the price to be fair and reasonable; 5) the contracting officer recommends payment and legal counsel concurs in the recommendation, unless agency procedures expressly do not require such concurrence; 6) funds are available and were available at the time the unauthorized commitment was made; and 7) the ratification is in accordance with any other limitations prescribed under agency procedures. The new guidelines are effective 2/22/88. For further information after reading the final rule, please contact Margaret A. Willis, FAR Secretariat, at 202/523-4755.

SECURITIES AND EXCHANGE COMMISSION

The creation of an Office of Economic Analysis was recently announced by the SEC to consolidate its economics program and to provide more comprehensive economic analyses and financial data to the Commission. The SEC said creation of this office combines the existing Office of the Chief Economist and the Directorate of Economic and Policy Analysis (DEPA) into a single organization. The Director of the new office will be Dr. Kenneth Lehn, currently the Chief Economist. Jeffry Davis, the Director of DEPA, will serve as Deputy Director in the new organization. According to the SEC, the Office of Economic Analysis will incorporate all the functions of the existing economic program offices. In addition, the staff will compile, analyze, and disseminate macroeconomic and financial data to the Commission. This function "will formalize the transmission of economic information and provide continually updated data highlighting significant changes in the national and international economic and financial conditions," the SEC said. The SEC stated that these data and the accompanying analyses will enhance its ability to "deliberate on national and transnational regulatory issues."

TREASURY, DEPARTMENT OF

Modification of present IRS procedure, as it pertains to newly electing S corporations, requiring payment of a user fee for requests to the IRS for rulings, opinion letters, and determination letters is the subject of a recent revenue procedure. Present IRS procedure is established in Revenue Procedure 88-8 (see the 1/18/88 Wash. Rpt.). The new procedure, Revenue Procedure 88-13, establishes a $150 charge for newly electing S corporations to file a Form 2553, Election by Small Business Corporation. The other fees established by Revenue Procedure 88-13 are as follows: $150 for Applications with Respect to Accounting Periods, Form 1128; $200 for Change in Accounting Method, Form 3115, and for Earnings and Profits Determinations, Form 5452; and $300 for all other rulings including accounting periods, accounting methods, and earnings and profits requests, except those submitted on Forms 1128, 2553, 3115, and 5452. The IRS also said that the user fee check or money order should not be attached to Form 2553 when it is filed a the IRS Service Center. Instead, the IRS National Office will inform the taxpayer that the fee is due, after it receives Form 2553. Revenue Procedure 88-13 is scheduled to be published in Internal Revenue Bulletin 1988-7, dated 2/16/88. If further information is needed after reading the procedure, please contact Clyde M. Donald at the IRS at 202/566-3560.

Temporary guidance with respect to the allocation of interest expense in connection with certain transactions involving partnerships and S corporations and the allocation of interest expense on debt proceeds received in cash or deposited in a commingled account has been issued by the IRS. The guidance was issued in Notice 88-20 and applies only to tax years beginning on or before 12/31/87. The IRS said it intends to issue regulations concerning the allocation of interest expense in connection with debt-financed contributions, purchases, and distributions. The Service said for taxable years ending after 12/31/87 "such regulations may require the allocation of interest expense in connection with such transactions in a manner different from the manner provided in this notice, without regard to when the debt was incurred." The notice modifies earlier rules to permit partnerships and S corporations to allocate debt proceeds and the associated interest expense among the assets of the entity using "any reasonable method." The notice states that "reasonable methods of allocating debt among the assets of a passthrough entity would ordinarily include a pro-rata allocation based on the fair market value, book value, or adjusted basis of the assets, reduced by any debt of the passthrough entity or the owner allocated to such assets." The IRS also noted that a purchase of an interest in a passthrough entity will be treated as a contribution to the capital of the entity to the extent that the entity receives proceeds from the purchase. Notice 88-20 is scheduled to be published in Internal Revenue Bulletin 1988-9, dated 2/29/88. If further information is needed after reading the notice, please contact Michael J. Grace at the IRS at 202/566-3288.

SPECIAL: HOUSE SUBCOMMITTEE SCHEDULES HEARING ON 1988 TAX RETURN FILING SEASON

A hearing to review the quality and availability of IRS taxpayer assistance has been scheduled by the House Ways and Means Subcommittee on Oversight for 2/23/88. In announcing the hearing, Subcommittee Chairman J.J. Pickle (D-TX) said, "As a result of the sweeping tax changes contained in the Tax Reform Act of 1986, the IRS is facing its stiffest challenge in decades...What can the IRS and the Congress do to insure that taxpayers have the information and assistance they need to properly file their tax returns?" The review is expected to focus on taxpayer difficulties which have surfaced, including problems resulting from implementation of the Tax Reform Act of 1986; the preparedness of the IRS for the current filing season, including employer training, IRS contingency plans, and the availability of tax forms and publications; and the status of Service Center workload inventories, including correspondence and adjustments, unpostables, returns processed and refunds issued, he said. In addition, the subcommittee will review the availability, utilization and capacity of computer equipment, including the status of the Communication Replacement System, electronic tax return filing, and development of the overall Tax System Redesign plan. The subcommittee will receive testimony from IRS Commissioner Lawrence B. Gibbs, Jr., representatives of the General Accounting Office and of tax professional organizations. The hearing is scheduled to begin at 9:30 a.m. on 2/23/88 in 1100 Longworth House Office Building, Washington, D.C. For further information please contact the Subcommittee on Oversight at 202/225-5522.

SPECIAL: CPA PROMOTED ON SENATE FINANCE COMMITTEE MINORITY STAFF; NEW CHIEF OF STAFF NAMED FOR JOINT COMMITTEE ON TAXATION

Lindy Paull, CPA, has been chosen to be the new deputy chief of staff for the Senate Finance Committee's minority staff by Sen. Bob Packwood (R-OR), the committee's ranking minority member. Ms. Paull had been serving on the Finance Committee's minority staff as deputy chief counsel. Sen. Packwood also named Ed Mihalski as the new chief of staff for the minority. Mr. Mihalski was previously the minority's deputy chief of staff.

In a related development, Ronald A. Pearlman has been selected as the new chief of staff for the Joint Committee on Taxation effective 3/7/88. The appointment was made by Sen. Lloyd Bentsen (D-TX), the chairman of the Senate Finance Committee, and Rep. Dan Rostenkowski (D-IL), the chairman of the House Ways and Means Committee. Mr. Pearlman is currently a partner with Bryan, Cave, McPheeters & McRoberts, a St. Louis law firm, and has previously served with the Department of Treasury as both the Deputy Assistant Secretary and the Assistant Secretary for Tax Policy, as well as in the Office of Chief Counsel of the IRS.

For further information contact Shirley Twillman at 202/737-6600.

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